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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/712,012	11/14/2003	Yoichi Sato	03560.003393.	7802
5514 7590 10/02/2009 FITZPATRICK CELLA HARPER & SCINTO 1290 Avenue of the Americas NEW YORK, NY 10104-3800				
EXAMINER				
DURNFORD GESZVAIN, DEILON				
ART UNIT		PAPER NUMBER		
2622				
MAIL DATE		DELIVERY MODE		
10/02/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/712,012

**Applicant(s)**

SATO, YOICHI

**Examiner**

Dillon Durnford-Geszvain

**Art Unit**

2622

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 September 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 11-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 11-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date \_\_\_\_\_

**DETAILED ACTION**

***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 9/16/2009 has been entered.

***Response to Amendment***

2. Claims **11-13** are pending, claims **11-13** are amended, and claims **1-10** are cancelled.

***Response to Arguments***

3. Applicant's arguments filed 9/16/2009 have been fully considered but they are not persuasive. The Applicant argues that Yamagishi does not continuously perform a plurality of image taking operations and continuously perform a plurality of dark capture operations in a state where the conversion area is shielded after completion of continuous performing the plurality of image taking operations. (Remarks p. 6). The Examiner respectfully disagrees. Applicant use of the word continuously in the claim is interpreted to mean that the operations are carried on for some indefinite period of time, i.e. not a single time. Applicant seems to be attempting to claim that the image taking

operations and the dark capture operations are being performed continuously and consecutively, but continuously alone does not convey what the Applicant may be attempting to claim. Therefore, Yamagishi teaches the limitations in that the continuous sequence of Fig. 9 is carried out until the switch SW2 is no longer being depressed.

***Claim Rejections - 35 USC § 102***

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claims **11-13** are rejected under 35 U.S.C. 102(e) as being anticipated by US 7,339,620 (Yamagishi)

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

6. As to claim **11**, Yamagishi teaches an imaging apparatus (Fig. 1) comprising:  
a photoelectric conversion area 14 including a plurality of photoelectric converters (C3 L15-20);

a controller 50 configured to continuously perform a plurality of image-taking operations at a plurality of different charge accumulation times, respectively, in a state where the photoelectric conversion area is not shielded by a shutter 12 (Image sensing

operations in Fig. 9 in continuous shot mode after SW2 is depressed), and continuously perform a plurality of dark capture operations at the plurality of different charge accumulation times, respectively, in a state where the photoelectric conversion area 14 is shielded by the shutter 12 (the dark capture operations performed after switch SW2 is depressed in Fig. 9 in continuous mode, C16 L6-10 and C11 L18-25) after completion of continuous performing the plurality of image taking operations (note the Examiner interprets the limitation of performing the plurality of dark capture operations after completion of performing the plurality of image taking operations to read that the dark capture operations are performed after each image capture operation as opposed to being performed before the image capture operations, this interpretation corresponds to Fig. 15 of the instant application, and the operations are performed continuously in that they are not halted after some predetermined number of times, such as one time),

an image processor 20 configured to correct a plurality of image data which is acquired in the plurality of image taking operations with a plurality of correction data which is acquired in the plurality of dark capture operations (Step S136, C13 L56 to C14 L3),

wherein the plurality of different charge accumulation times of the dark capture operations are equal to that of the image taking operations (C11 L18-25).

7. As to claim 12, see the rejection of claim 11 and note that Yamagishi further teaches the imaging apparatus of claim 11, wherein at least two of the accumulation times for generating the correction data in the dark capture operations are different (C16

L50-61), and the dark capture operations are performed in the same order as the image taking operations (Fig. 9).

8. As to claim **13**, see the rejection of claim **11** and note that Yamagishi further teaches the imaging apparatus of claim **11**, wherein at least two of the accumulation times for generating the correction data in the dark capture operations are different (C16 L50-61), and the dark capture operations are performed in ascending order of the image taking operations (Fig. 9 and note that this is the case if the image taking operations also happen to be in ascending order, such as the scene is becoming darker).

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dillon Durnford-Geszvain whose telephone number is (571)272-2829. The examiner can normally be reached on Monday through Friday 8 am to 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sinh Tran can be reached on (571) 272-7564. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/DDG/

9/28/2009

/Sinh Tran/  
Supervisory Patent Examiner, Art Unit 2622